



February 2003

CURRENT REPORTING REQUIREMENTS FOR FOREIGN DIRECT INVESTMENT IN THE UNITED STATES

All foreign investments in U.S. business enterprises in which a foreign person owns a ten-percent-or-more voting interest (or the equivalent) are subject to reporting, including all ownership of real estate, improved and unimproved, other than for personal use. Reporting to the Bureau of Economic Analysis (BEA) is required pursuant to the International Investment and Trade In Services Survey Act, as amended (citations and penalties are described later).

Required reporting may be categorized as:

- I. Initial investment reports, for reporting the establishment or acquisition of a U.S. affiliate (Forms BE-13 and BE-13C—Exemption Claim);
- II. Quarterly balance of payments reports, for qualifying reporters (Forms BE-605 and BE-605 Bank);
- III. Annual reports, for qualifying reporters (Forms BE-15(LF), BE-15(SF), and BE-15 Supplement C—Exemption Claim); and
- IV. Quinquennial reports in benchmark surveys (Forms BE-12(LF), BE-12(SF), BE-12 Bank, and BE-12X).

I. Initial investment reports.--**Form BE-13, Initial Report on a Foreign Person's Direct or Indirect Acquisition, Establishment, or Purchase of the Operating Assets, of a U.S. Business Enterprise, Including Real Estate**, is required for new investment transactions, in which a foreign person, or a U.S. affiliate of a foreign person, acquires a ten-percent-or-more voting interest (or the equivalent) in a U.S. business enterprise that has total assets of more than \$3 million or involves the acquisition of 200 or more acres of U.S. land. The form collects selected financial and operating data about the U.S. business enterprise acquired or established; information on investment incentives; identifying information about the person acquiring or establishing the U.S. business enterprise, including ultimate beneficial ownership; and the cost of the investment.

Parts I through IV of Form BE-13 collect identification information and selected financial and operating data about the U.S. business enterprise acquired or established. The U.S. affiliate's industry classification is reported in Part IV and requires a breakdown of sales by industry. Part V collects information on investment incentives. Part VI collects identifying information about the person acquiring or establishing the U.S. business enterprise, including ultimate beneficial ownership, and the cost of the investment.

Note that real estate acquired for other than personal use is considered a business

enterprise and, thus, a reportable investment; only real estate that is exclusively for personal use is totally exempt from being reported. A partial exemption (on Supplement C--Exemption Claim), whereby only minimal information must be reported, applies where the newly acquired or established U.S. business enterprise has total assets of \$3 million or less and owns less than 200 acres of U.S. land.

The BE-13 report is due to be filed no later than 45 days after the investment transaction occurs. The information provided in the report is used to define what other reports may be required to be filed by the U.S. affiliate.

II. Quarterly balance of payments reports.--The purpose of the quarterly reports, **Forms BE-605 and BE-605 Bank** is to report direct financial transactions and positions between the U.S. affiliate and its foreign parent groups (which are defined to include all foreign parents and foreign affiliates of foreign parents). These forms are:

- a. **Form BE-605, Transactions of U.S. Affiliate, Except a U.S. Banking Affiliate, with Foreign Parent**. Except as exempted below, this report is required each quarter for every nonbank U.S. business enterprise in which a foreign person had a direct and/or indirect voting ownership interest (or the equivalent) of at least 10 percent at any time during the quarter. (If the ownership is indirect and the U.S. affiliate has no direct transactions or positions with its foreign parent group(s), then the affiliate would complete only item 3 on the Certificate of Exemption, on page 3 of the report form.)
- b. **Form BE-605 Bank, Transactions of U.S. Banking Affiliate with Foreign Parent**. Except as exempted below, this report is required from every U.S. affiliate that is a bank, or U.S. bank holding company, including all of the banking and nonbanking subsidiaries and units of the bank holding company, both incorporated and unincorporated, in which a foreign person had a direct and/or indirect voting ownership interest (or the equivalent) of at least 10 percent at anytime during the quarter.

For both of these reports, the U.S. affiliate is not required to report if each of the following items for the affiliate is \$30 million or less:

1. Total assets,
2. Annual sales or gross operating revenues, and
3. Annual net income (loss) after provision for U.S. income taxes.

These reports are required to be filed within 30 days after the close of each calendar or fiscal quarter, except that the report for the fourth quarter may be filed 45 days after the end of that quarter.

A U.S. affiliate that meets the exemption criteria stated above must, nevertheless, file the

Certification of Exemption from Filing a BE-605 or BE-605 Bank. Please note, however, that the Certification of Exemption is **not** a quarterly filing requirement for those U.S. affiliates that meet the exemption criteria from quarter to quarter. However, the Certification of Exemption **is** required to be filed if BEA mails you a pre-labeled packet of BE-605 forms **and** the U.S. affiliate does not meet the criteria for filing either the BE-605 or BE-605 Bank report.

III. Annual reports beginning with the report covering the U.S. affiliate's fiscal year that had an ending date in calendar year 2003 --The Annual Survey of Foreign Direct Investment in the United States requires reporting of financial and operating data of U.S. affiliates on **Form BE-15(LF), the long form, Form BE-15(SF) the short form, or Form BE-15 Supplement C--Claim for Exemption from filing a BE-15(LF) or BE-15(SF)**. Reports on these forms are required for nonbank U.S. affiliates; that is, for nonbank U.S. business enterprises in which a foreign person owns or controls, directly or indirectly, a ten-percent-or-more voting interest in an incorporated U.S. business enterprise, or the equivalent interest in an unincorporated U.S. business enterprise--as of the end of the U.S. business enterprise's fiscal year. A nonbank U.S. affiliate is exempted from filing a BE-15(LF) or BE-15(SF) if **each** of the following items is \$30 million or less:

1. Total assets,
2. Annual sales or gross operating revenues, and
3. Annual net income (loss) after provision for U.S. income taxes.

A U.S. affiliate that meets the exemption criteria stated above must, nevertheless, file a BE-15 Supplement C--Claim for exemption. Please note, however, that the BE-15 Supplement C is **not** an annual filing requirement for those U.S. affiliates that meet the exemption criteria from year to year. However, Supplement C **is** required to be filed if BEA mails you a pre-labeled packet of BE-15 forms **and** the U.S. affiliate does not meet the criteria for filing either the BE-15(LF) or BE-15(SF) report.

Reporting should be on a fully consolidated domestic (U.S.) basis, including in the full consolidation all U.S. affiliates owned more than 50 percent by the U.S. affiliate above it in the ownership chain. Depending upon the size of the consolidated entity, either the BE-15(LF) long form, or the BE-15(SF) short form will be required.

- a. **Form BE-15(LF)**, the long form, must be completed by each nonbank majority-owned U.S. affiliate (a "majority-owned" U.S. affiliate is one in which the combined direct and indirect ownership interest of all foreign parents of the U.S. affiliate exceeds 50 percent) with total assets, sales or gross operating revenues, or net income greater than \$125 million (positive or negative).
- b. **Form BE-15(SF)**, the short form, must be completed by
 - (1) Each nonbank majority-owned U.S. affiliate with any one of the

following three items--total assets, sales or gross operating revenues, or net income--greater than \$30 million, and no one of these (three) items greater than \$125 million (positive or negative) and,

- (2) Each nonbank minority-owned U.S. affiliate (owned 50 percent or less) with total assets, sales or gross operating revenues, or net income greater than \$30 million (positive or negative).

IV. Quinquennial benchmark reports.--The quinquennial survey, the **BE-12, Benchmark Survey of Foreign Direct Investment in the United States**, is a comprehensive survey of such investment, and the International Investment and Trade In Services Survey Act requires that it be conducted at least once every five years. Because benchmark surveys are censuses, either a **Form BE-12(LF), the long form, BE-12(SF), the short form, Form BE-12 Bank or Form BE-12X--Claim for not filing a BE-12(LF), (SF), or Bank**, is required for each U.S. business enterprise in which a foreign person owned or controlled, directly or indirectly, a 10-percent-or-more voting ownership interest (or the equivalent) at any time during the enterprise's fiscal year that represents a benchmark year. The BE-12, benchmark survey, will cover the years 2002, 2007, 2012, etc.

The benchmark survey covering 2002 is required to be filed by May 31, 2003. In a manner similar to the annual survey, reporting is on a fully consolidated domestic (U.S.) basis, and separate forms are provided for firms of different sizes:

- a. **Form BE-12(LF)**, the long form, must be completed by each nonbank majority-owned U.S. affiliate (a "majority-owned" U.S. affiliate is one in which the combined direct and indirect ownership interest of all foreign parents of the U.S. affiliate exceeds 50 percent) with total assets, sales or gross operating revenues, or net income greater than \$125 million (positive or negative).
- b. **Form BE-12(SF)**, the short form, must be completed by
 - (1) Each nonbank majority-owned U.S. affiliate with any one of the following three items--total assets, sales or gross operating revenues, or net income--greater than \$10 million, and no one of these (three) items greater than \$125 million (positive or negative) and,
 - (2) Each nonbank minority-owned U.S. affiliate (owned 50 percent or less) with total assets, sales or gross operating revenues, or net income greater than \$10 million (positive or negative). U.S. affiliates with total assets, sales or gross operating revenues, and net income between \$10 million and \$30 million (positive or negative) will be required to report only selected data items on the short form.

- c. **Form BE-12 Bank**, must be completed by each U.S. affiliate that is a bank, or a bank holding company, including all of the banking and nonbanking subsidiaries and units of the bank holding company, any one of the following three items--total assets, sales or gross operating revenues, or net income--was more than \$10 million (positive or negative).
- d. **Form BE-12(X)–Claim for Exemption from Filing BE-12(LF), BE-12(SF), or BE-12 Bank** must be completed by each U.S. affiliate (as consolidated) if **each** of the three items (total assets, sales or gross operating revenues, and net income) did not exceed \$10 million (positive or negative), or if foreign ownership in the U.S. affiliate fell below 10 percent during the benchmark year.

Beginning with the 2002 benchmark survey, BEA will offer an electronic filing option based on its Automated Survey Transmission and Retrieval (ASTAR) system, which has been implemented for the BE-605, quarterly survey of foreign direct investment in the United States. The ASTAR system employs state-of-the-art encryption security features to protect confidential information transmitted in the electronic form. For more information about ASTAR go to BEA's Web site at www.bea.gov/astar.

Legal Authority and Confidentiality

All reports are mandatory pursuant to the International Investment and Trade in Services Survey Act (P.L. 94-472, 90 Stat. 2059, 22 U.S.C. 3101-3108, as amended by P.L. 98-573 and P.L. 101-533). The Act states that whoever fails to report shall be subject to a civil penalty of not less than \$2,500 and not more than \$25,000, and to injunctive relief commanding such person to comply, or both. Whoever willfully fails to report shall be fined not more than \$10,000 and, if an individual, may be imprisoned for not more than one year, or both. Any officer, director, employee, or agent of any corporation who knowingly participates in such violations, upon conviction, may be punished by a like fine, imprisonment or both.

The Act provides that all reports submitted are confidential and may be used only for analytical or statistical purposes. Without the prior written permission of the respondent, the information filed cannot be presented in a manner that allows it to be individually identified. The information provided cannot be used for purposes of taxation, investigation, or regulation. Copies of reports retained by the respondent are immune from legal process.

The rules and regulations implementing the Act can be found in 15 CFR Part 806. Amendments to the regulations are published in the Federal Register. Although BEA attempts to notify respondents that are believed to qualify for the periodic surveys, it is incumbent on U.S. affiliates to meet the reporting requirements contained in the Federal Register. When an initial report is filed with BEA, the affiliate will receive blank forms for the surveys that are thought to apply. This office should be notified (see telephone

number and address below) if report forms are needed, if there is a change in a status that would affect reporting (such as consolidation into another company or elimination of a foreign ownership interest), or if there is an address change. Copies of the report forms and instructions are available on BEA's Web site at www.bea.doc.gov/bea/surveys/fdiusurv.htm. If you have questions or need additional information, please call (202) 606-5577, or write to:

U.S. Department of Commerce
Bureau of Economic Analysis, BE-49
Washington, DC 20230.